

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF TENNESSEE  
NASHVILLE DIVISION

DAVID DELL'AQUILA,	)	
LORANND A BORJA,	)	
TODD CHESNEY, and	)	
BRENT WEBER, on behalf of themselves	)	
and all others similarly situated,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	No. 3:19-cv-00679
	)	
WAYNE LAPIERRE, the NATIONAL	)	Judge Campbell
RIFLE ASSOCIATION OF AMERICA,	)	Magistrate Judge Frenzley
and the NRA FOUNDATION, INC.,	)	
	)	JURY DEMAND
Defendants.	)	

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**NRA FOUNDATION, INC.’S MOTION TO DISMISS  
PLAINTIFFS’ SECOND AMENDED COMPLAINT**

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Pursuant to Rules 12(b)(1) and 12(b)(6) of the Federal Rules of Civil Procedure, Defendant NRA Foundation, Inc. (the “NRA Foundation”) respectfully moves to dismiss Plaintiffs’ Second Amended Complaint (D.E. 43) with prejudice. As explained more fully in the accompanying Memorandum, Plaintiffs have not cured any of the legal deficiencies from the First Amended Complaint, and the Court should dismiss this case against the NRA Foundation for three independent reasons:

**First**, Plaintiffs lack standing. Under Tennessee law, a nonprofit corporation’s authority to act may only be challenged by the Attorney General, a director, or member(s) in a derivative proceeding. *See* Tenn. Code Ann. § 48-53-104. Plaintiffs are none of those things. Moreover, Plaintiffs gave the NRA Foundation unrestricted charitable donations—but donors of unrestricted charitable funds lack standing to challenge the subsequent administration of those funds.

**Second**, Plaintiffs' Second Amended Complaint does not satisfy the heightened pleading standards applicable to their fraud and RICO claims. All of Plaintiffs' claims center around the allegation that the NRA Foundation made supposedly false "solicitations"—but Plaintiffs never specify those statements, identify the speaker(s), or allege where/when the supposedly false statements were made. The Second Amended Complaint therefore fails to meet Rule 9(b)'s particularity requirements.

**Third**, Plaintiffs' Second Amended Complaint does not plausibly allege the elements of their fraud and RICO claims. It does not plausibly allege the NRA Foundation knowingly made any false representations. Nor does it allege the NRA Foundation ever made any "solicitations" via the U.S. Postal Service. It also fails to allege any specific affirmative misrepresentations or identifies any basis for inferring scienter (as required under RICO).

Accordingly, Plaintiffs cannot obtain relief against the NRA Foundation under any set of facts consistent with their allegations. This Court should therefore dismiss all claims against the NRA Foundation.

Dated: February 19, 2020

Respectfully Submitted,

**NEAL & HARWELL, PLC**

/s/ Aubrey B. Harwell, Jr.

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## **CERTIFICATE OF SERVICE**

I certify that I caused a true and correct copy of the foregoing to be electronically filed with the Clerk of the Court on February 19, 2020, using the CM/ECF system, which will send notification to all counsel of record as listed below.

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/s/ Aubrey B. Harwell, Jr.